

■ 3. Section 52.1627 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 52.1627 Control strategy and regulations: Carbon monoxide.**

\* \* \* \* \*

(b) Approval—The Albuquerque/Bernalillo County carbon monoxide limited maintenance plan revision dated September 7, 2004, meets the requirements of section 172 of the Clean Air Act, and is therefore approved.

[FR Doc. 05–14388 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[MD Docket Nos. 05–59 and 04–73; FCC 05–137]

**Assessment and Collection of Regulatory Fees for Fiscal Year 2005; Assessment and Collection of Regulatory Fees for Fiscal Year 2004**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we conclude a proceeding to collect \$280,098,000 in regulatory fees for Fiscal Year (FY) 2005. These fees are mandated by Congress and are collected to recover the regulatory costs

associated with the Commission's enforcement, policy and rulemaking, user information, and international activities. We also deny the petition for reconsideration filed by Cingular Wireless LLC of the Commission's *FY 2004 Report and Order*.

**DATES:** Effective August 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

**SUPPLEMENTARY INFORMATION:**

*Adopted:* July 1, 2005.

*Released:* July 7, 2005.

*By the Commission:* Commissioner Copps concurring and issuing a statement; Commissioner Adelstein approving in part, concurring in part, and issuing a statement.

**TABLE OF CONTENTS**

Heading	Paragraph No.
I. Introduction .....	1
II. Discussion .....	2
A. Development of FY 2005 Fees .....	2
1. Calculation of Revenue and Fee Requirements .....	2
2. Additional Adjustments to Payment Units .....	3
3. Commercial Mobile Radio Service (CMRS) Messaging Service .....	5
4. Local Multipoint Distribution Service (LMDS) .....	6
5. International Bearer Circuits .....	8
6. Regulatory Fees for Direct Broadcast Service (DBS) Providers and Cable Television Operators .....	10
7. Multichannel Video Distribution and Data Service (MVDDS) .....	12
8. Broadband Radio Service (BRS) / Educational Broadband Service (EBS), (formerly MDS/MMDS and ITFS) .....	13
9. Regulatory Fees for AM and FM Construction Permits .....	14
10. Clarification of Policies and Procedures .....	16
a. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies .....	16
b. Regulatory Fee Obligations for Digital Broadcasters .....	23
c. Regulatory Fee Obligations for AM Expanded Band Broadcasters .....	24
d. Effective Date of Payment of Multi-Year Wireless Fees .....	26
11. Notification, Assessment and Collection of Regulatory Fees .....	27
a. Interstate Telecommunications Service Providers (ITSPs) .....	29
b. Satellite Space Station Licensees .....	31
c. Media Services Licensees .....	34
d. Cable Television Subscribers .....	36
B. FY 2005 Fee Determination and FY 2004 Reconsideration .....	38
12. Commercial Mobile Radio Service (CMRS) Providers .....	38
III. Procedural Matters .....	45
A. Payment of Regulatory Fees .....	45
1. De Minimis Fee Payment Liability .....	45
2. Standard Fee Calculations and Payment Dates for Annual Regulatory Fees .....	46
3. Limitations on Credit Card Transactions .....	48
B. Enforcement .....	49
C. Congressional Review Act Analysis .....	51
IV. Ordering Clauses .....	52
Attachments:	
Attachment A Final Regulatory Flexibility Analysis	
Attachment B Sources of Payment Unit Estimates for FY2005	
Attachment C Calculation of Revenue Requirements and Pro-Rata Fees	
Attachment D FY 2005 Schedule of Regulatory Fees	
Attachment E Factors, Measurements, and Calculations that Determine Station Contours and Population Coverages	
Attachment F List of Commenters	
Attachment G FY 2004 Schedule of Regulatory Fees	

## I. Introduction

1. In this *Order*, we conclude a proceeding to collect \$280,098,000 in regulatory fees for Fiscal Year (FY) 2005. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.<sup>2</sup> We also deny the petition for reconsideration filed by Cingular Wireless LLC of the Commission's *FY 2004 Report and Order*.<sup>3</sup>

## II. Discussion

### A. Development of FY 2005 Fees

#### 1. Calculation of Revenue and Fee Requirements

2. As explained below, we adjust our section 9 regulatory fees to reflect the requirement to collect \$280,098,000 in regulatory fees during FY 2005. As described in the *FY 2005 NPRM*,<sup>4</sup> this adjusted amount is \$7,140,000, or approximately 2.6 percent greater than the \$272,958,000 we were required to collect during the previous fiscal year. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees. The results of this calculation are contained in Attachment C.<sup>5</sup> For FY 2005, this allocation was done using FY 2004 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 2.6 percent to reflect the increase in regulatory fees from FY 2004 to FY 2005. These FY 2005 amounts were then divided by the number of payment units in each fee category to determine the unit fee.<sup>6</sup> In instances of small fees, such

as licenses that are renewed for a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded to the nearest \$5 or \$25 in accordance with 47 U.S.C. 159(b)(2).

#### 2. Additional Adjustments to Payment Units

3. In calculating the FY 2005 regulatory fees in Attachment D, we further adjusted the FY 2004 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.<sup>7</sup> Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2005, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, when we note that our estimated FY 2005 payment units are based on FY 2004 actual payment units, we may have rounded the number for FY 2005 or adjusted it slightly to account for these variables.

4. We consider additional factors to determine regulatory fees for AM and FM radio stations. These factors are facility attributes (class of service and type (AM or FM) of service), as well as the population served by the radio station. Calculating the population served for each radio station is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the class and type of service, as well as the

population served, determine the regulatory fee amount to be paid.

#### 3. Commercial Mobile Radio Service (CMRS) Messaging Service

5. In the *FY 2005 NPRM*, the Commission proposed to continue its policy of maintaining the CMRS Messaging Service regulatory fee at the rate calculated in FY 2003 and FY 2004 to avoid further contributing to the financial hardships associated with a declining subscriber base.<sup>8</sup> We received no comments or reply comments on this matter. Consequently, we will maintain the CMRS Messaging Service regulatory fee at \$0.08 per subscriber.

#### 4. Local Multipoint Distribution Service (LMDS)

6. In the FY 2004 proceeding, the Commission identified a difference in treatment between LMDS Block A and Block B licensees for the purposes of assessing section 9 regulatory fees. This difference resulted in a disproportionately higher fee obligation on LMDS Block B licenses when compared on a per-megahertz (MHz) basis.<sup>9</sup> As a result, in the *FY 2005 NPRM*, we proposed to amend the fee schedule and assess LMDS regulatory fees on a flat MHz basis.<sup>10</sup> We received two comments on this proposal. These commenters oppose the proposal to collect LMDS regulatory fees on a per-MHz basis, arguing that the Commission cannot use a per-MHz regulatory fee for LMDS without using the same fee methodology for the 24 GHz and 39 GHz services.<sup>11</sup> We decline to adopt a per-MHz fee methodology for LMDS at this

<sup>2</sup> See *FY 2005 NPRM*, 70 FR at 9576, para. 5.

<sup>2</sup> 47 U.S.C. 159(a).

<sup>3</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order*, 19 FCC Rcd 11,662 (2004) (*FY 2004 Report and Order*); see *infra* paras. 38–41.

<sup>4</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Notice of Proposed Rulemaking*, 70 FR at 9575, 9576, para. 5, (2005) (*FY 2005 NPRM*).

<sup>5</sup> It is important to note that the required increase in regulatory fee payments of approximately 2.6 percent in FY 2005 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 2.6 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

<sup>6</sup> In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for

International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber, etc.

<sup>7</sup> The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report*. For additional information on source material, see Attachment B.

<sup>9</sup> *FY 2004 Report and Order*, 19 FCC Rcd 11,662, 11,669, para. 16. Block A licensees are authorized for 1150 MHz of spectrum, while Block B licensees are authorized for 150 MHz of spectrum. Using the authorized bandwidth for each license as the basis for comparison, the Commission noted that the regulatory fee for Block B licenses in FY 2004 was significantly higher on a per-MHz basis than the fee for Block A licenses. On a per-MHz basis, Block B licensees, which are authorized for 150 MHz in the 31,000–31,075/31,225–31,300 MHz bands, paid regulatory fees equivalent to \$1.80 per MHz (\$270 divided by 150 MHz) in FY 2004, while Block A licensees, which are authorized for 1150 MHz of spectrum, paid the equivalent \$0.24 per MHz (\$270 divided by 1150 MHz).

<sup>10</sup> *FY 2005 NPRM*, 70 FR at 9577, para. 7. The Commission proposed to set a per-MHz per unit fee of \$0.44 for LMDS licensees, and then multiply the unit fee by the amount of bandwidth authorized for Block A and Block B licenses. As proposed, in FY 2005 the regulatory fee amount for Block A licensees would have been \$0.44 multiplied times 1150 MHz = \$506, rounded to \$505; while the amount for Block B licensees would have been \$0.44 multiplied times 150 MHz = \$66, rounded to \$65.

<sup>11</sup> Comments of XO Communications (XO), at 2–7; Comments of the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (BMDDP), at 2–4.

time, and we will therefore retain our existing methodology for assessing LMDS fees for FY 2005.<sup>12</sup>

7. The commenters also argued that LMDS should be reclassified for fee assessment purposes as a microwave service.<sup>13</sup> The Commission determined in its FY 2003 fee proceeding that LMDS was developing on a separate track from microwave services and that it should be moved into a separate fee category.<sup>14</sup> The Commission subsequently rejected arguments to place LMDS in the microwave fee category in the *FY 2004 Report and Order*.<sup>15</sup> XO and BMDDP have presented no new evidence or arguments that would cause us to reconsider that decision. We find no compelling reason to reclassify LMDS as a microwave service, which would reduce the LMDS annual fee by more than 80 percent, and thereby impose a disproportionate financial burden on fee payers in other service categories. We therefore will maintain the existing regulatory fee classification for LMDS for FY 2005.

#### 5. International Bearer Circuits

8. We decline to change or modify the methodology for assessing regulatory fees for international carriers at this time. In the *FY 2005 NPRM*, we sought comment on possible changes to the regulatory fees assessed on international carriers.<sup>16</sup> Only three parties filed comments and/or reply comments on this matter.<sup>17</sup> The Commission currently assesses regulatory fees on international carriers based on the number of active international bearer circuits the carrier had the previous year.<sup>18</sup>

9. We are not persuaded by these commenters that a significant change to our section 9 regulatory fee assessment methodology for international bearer circuits is warranted at this time, or that the benefits of changing our assessment methodology outweigh the costs of modifying our systems and processes at this time. We decline to adopt the Tyco proposal to create a new, separate fee category for non-common carrier cable landing licensees at this time.<sup>19</sup> As a practical matter, we note that we have at present no acceptable methodology for allocating fee requirement between categories of payers.<sup>20</sup> Even if we had an acceptable methodology, we would not be able to undertake the required analysis in time for FY 2005 fee payments and still comply with the section 9(b)(3) notification requirement. Moreover, because creating a new section 9 regulatory fee category would impact other international carriers, we would want to address the issue of regulatory fee payments by international carriers as a whole and not make discrete changes for one category of payers at this time. In addition, we conclude that Tyco's main concern is addressed by modifying the section 9 regulatory fee for international bearer circuits rather than creating an entirely new category of section 9 regulatory fees. To that end, we note that these fees have declined substantially, due to increased capacity in the active circuit market: The FY 2005 section 9 fee assessment of \$1.37 per 64 kbps circuit is just over half the \$2.52 per 64 kbps circuit fee adopted for FY 2004, and is 32% below the \$2.01 per 64 kbps circuit proposed in the *FY 2005 NPRM*. For these reasons, we find that it would not be appropriate to change the fee

customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC Web site at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-249904A4.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf)).

<sup>19</sup> Tyco Comments at 7–8. We may revisit this determination in the regulatory fee proceeding for FY 2006.

<sup>20</sup> Tyco proposes that the Commission use either employee or employee-hour equivalents to establish the regulatory fee requirements for non-common carrier cable landing licensees. Tyco Comments at 23–25.

assessment for international carriers for FY 2005. We note that in the *FY 2005 NPRM*, we stated that we would not implement any changes to the bearer circuit fee assessment methodology for this FY 2005 collection cycle.<sup>21</sup>

#### 6. Regulatory Fees for Direct Broadcast Service (DBS) Providers and Cable Television Operators

10. We decline to modify the FY 2005 regulatory fee assessment methodology for DBS providers in response to the comments of the National Cable and Telecommunications Association (NCTA) and American Cable Association (ACA). NCTA argues that cable operators pay a disproportionately larger amount of the Commission's regulatory fees as compared to DBS providers, despite the fact that they are similarly situated competitors.<sup>22</sup> NCTA proposes that the Commission adopt the same per-subscriber assessment for DBS operators that applies to cable television operators. DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV & Echostar), in joint reply comments, argue that the cable operators have failed to make the required showing to satisfy the legal standard in section 9 of the Act for changes to the Commission's regulatory fee structure.<sup>23</sup> DirecTV and Echostar further argue that the costs to the Commission of regulating cable exceed those associated with DBS.<sup>24</sup>

11. We agree that the cable commenters have not made a compelling argument, consistent with the standard set forth in section 9(b)(3) for "permitted amendments", to justify a change to the section 9 regulatory fees for DBS operators. Moreover, the Commission has not provided notice for a change to the fee methodology for DBS operators. However, the Commission may seek further information on this issue during FY 2006 in order to fully explore whether there is a legal basis for such a change and to analyze the impact of any change in the methodology used to assess fees both for DBS providers and cable television operators. Therefore, for FY 2005, we will continue to use our current methodology for assessing regulatory fees for cable television operators and DBS operators.

<sup>21</sup> *FY 2005 NPRM*, 70 FR at 9578, para. 16.

<sup>22</sup> Comments of NCTA at 4–8. See also ACA Comments at 2–3 (arguing that the difference in regulatory fee treatment increases the burden on cable operators in small markets).

<sup>23</sup> Reply Comments of DirecTV and Echostar at 3.

<sup>24</sup> *Id.* at 5.

<sup>12</sup> However, we may revisit the per-MHz and other fee methodologies in the future.

<sup>13</sup> XO Comments at 2–5; BMDDP Comments at 4–5.

<sup>14</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order*, 18 FCC Rcd 15,985, 15,989, at para. 9 (2003) (*FY 2003 Report and Order*).

<sup>15</sup> *FY 2004 Report and Order*, 19 FCC Rcd at 11,669, para. 16.

<sup>16</sup> *FY 2005 NPRM*, 70 FR at 9577, 9578, paras. 11–17.

<sup>17</sup> Tyco filed comments and reply comments, SIA filed comments and Level 3 filed reply comments that addressed the international bearer circuit issue. The parties generally argued that the current methodology for assessing regulatory fees on the number of active circuits favors older, lower capacity systems, and a fee system based on cable landing licenses and international section 214 authorizations would be administratively simpler and provide an incentive for carriers to initiate new services.

<sup>18</sup> Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any

## 7. Multichannel Video Distribution and Data Service (MVDDS)

12. We decline to establish a MVDDS regulatory fee category at this time. In our *FY 2005 NPRM*, we proposed that, since MVDDS licenses were first awarded in 2004 and equipment is still under development, we would not establish MVDDS as a new regulatory fee category in FY 2005.<sup>25</sup> We received no comments or reply comments on this matter. We therefore adopt our proposal and will not establish a MVDDS regulatory fee category for FY 2005.

## 8. Broadband Radio Service (BRS)/ Educational Broadband Service (EBS) (Formerly MDS/MMDS and ITFS)

13. We note that the BRS/EBS proceeding is currently pending.<sup>26</sup> As we stated in the *FY 2005 NPRM*, we are exploring regulatory fee assessment issues for BRS/EBS in that proceeding.<sup>27</sup> To the extent we adopt any changes to our regulatory fee rules in that proceeding, such changes will not be effective in time for the FY 2005 regulatory fee assessments. We expect to make any appropriate adjustments in the FY 2006 regulatory fee cycle or later.

## 9. Regulatory Fees for AM and FM Construction Permits

14. At the inception of our regulatory fee program in FY 1994, the regulatory fee amount for construction permits was set at an amount that, when compared to licensed stations, was commensurate to the limited nature of station operations under the terms of a construction permit. However, since 1994, the amount of fees that we have been directed to collect each year has steadily increased, while the number of estimated payment units for these construction permits has steadily decreased. This combination of increasing expected revenue and decreasing payment units for these construction permits has resulted in a regulatory unit fee that is higher than that of some licensed stations.

15. To rectify this situation, we proposed to set the AM, FM, VHF, and UHF construction permit fee to be no higher than the regulatory fee associated with the lowest licensed station for that fee category, noting that because there are unit and revenue variables in

assessing the per-unit regulatory fee, it may be necessary to make revenue adjustments each fiscal year to keep the per unit regulatory fee for construction permits at the level of the lowest licensed fee for AM, FM, VHF, and UHF stations. We did not receive any comments or reply comments on this matter. Therefore, beginning in FY 2005, we will hold fee amounts for construction permits in each respective fee category (e.g., AM, FM, VHF and UHF stations) to levels no higher than the lowest fee amounts for licensed facilities in each respective fee category, and if necessary, will make adjustments across only a narrow group of media fee categories, such as AM, FM, VHF and UHF stations, to keep the level of the lowest respective licensed fee.

## 10. Clarification of Policies and Procedures

### a. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies

16. Pursuant to 47 CFR 1.1162, the Commission does not establish regulatory fees for applicants, permittees, and licensees who qualify as government entities or non-profit entities. Despite the language of 47 CFR 1.1162, we still frequently encounter uncertainty and comments from parties with respect to our fee exemption policies. In our *FY 2005 NPRM*, we proposed certain clarifications to our exemption policies.<sup>28</sup> We received no comments or reply comments regarding our fee exemption policies. Therefore, we will be incorporating these clarifications into the text of the regulatory fee public notices that are generated each year prior to the collection of regulatory fees.

17. *Terminology*: In the ensuing discussion, “facility” includes “station” and “licensee” includes “permittee.” “October 1” means the close of business on October 1, the first day of the government fiscal year. “Fee Due Date” means the close of business on the day determined to be the final date by which regulatory fees must be paid. The Fee Due Date usually occurs in August or September. An “Exempt Entity” is a legal entity that is relieved of the burden of paying annual regulatory fees.

18. *Determination of Fee Code for a Facility*: The fee code is determined by the operational status of the facility as of October 1 of each year. This involves factors such as whether the facility is in a Construction Permit (CP) or Licensed status and a variety of other factors. Every facility has a fee code.

19. *Facility Changes During the Year*: There is no prorating of regulatory fees. For example, if a facility is in construction permit status as of the close of business October 1, but a license is granted on or after October 2, that facility is considered to be in construction permit status for the entire year. Other facility changes during the course of the year, such as technical changes, are treated in the same manner.

20. *Establishment of Exempt Status*: State, local, and Federal government agencies and IRS-certified not-for-profit entities are generally exempt from payment of regulatory fees. The Commission requires that each exempt entity have on file a valid IRS Determination Letter or certification from a government authority documenting its exempt status. In instances where there is a question regarding the exempt status of an entity, the FCC may request, at any time, for the entity to submit an IRS Determination Letter or certification from a government authority that documents its exempt status.

21. *Subsidiaries of Exempt Entities*: The licensee of a facility may be distinct from the ultimate owner. Exempt entities may hold one or more licenses for media facilities directly and/or through subsidiaries. Facilities licensed directly to an exempt entity and its exempt subsidiaries are excused from the regulatory fee obligation. However, licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.

## Examples

A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity.

A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.

22. *Responsible Party, and the Effects of Transfers of Control*: The entity holding the license for a facility as of the Fee Due Date is responsible for the regulatory fee for that facility. Eligibility for a regulatory fee exemption is determined by the status of the licensee

<sup>25</sup> *FY 2005 NPRM*, 70 FR at 9579, para. 21.

<sup>26</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands *et al.*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14293–97 (2004) (R&O and FNPRM).

<sup>27</sup> *FY 2005 NPRM*, 70 FR at 9579, paras. 22–23.

<sup>28</sup> *FY 2005 NPRM*, 70 FR at 9579, 9580, paras. 26–30.

as of the Fee Due Date, regardless of the status of any previous licensee(s).

b. Regulatory Fee Obligations for Digital Broadcasters

23. In our *FY 2005 NPRM*, we noted that our current schedule of regulatory fees does not include service categories for digital broadcasters.<sup>29</sup> Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at the present time is for their analog facility. Moreover, a licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum would have no regulatory fee obligation under the current fee regime. We sought comment on whether to establish a regulatory fee category for digital broadcasters, but received no comments or reply comments on this matter.<sup>30</sup> At this time, we will maintain the regulatory fee obligation that applies only for the analog facility.

c. Regulatory Fee Obligations for AM Expanded Band Broadcasters

24. We do not require AM Expanded Band radio stations to pay section 9 regulatory fees for their expanded band AM station at this time. In the *FY 2005 NPRM*, we proposed to clarify this point and to explain that licensees that operate a standard band AM station (540–1600 kHz) that is linked to an AM Expanded Band station are subject to regulatory fees for their standard band station only.<sup>31</sup> We recognized uncertainty about the regulatory fee status in the industry that resulted from the fact that AM Expanded Band radio service is not among the Commission's categories of general exemptions from regulatory fees specified in the Commission's rules.<sup>32</sup> We received no comments or reply comments on this matter.

25. We will continue to refrain from requiring AM Expanded Band radio stations to pay section 9 regulatory fees for their stations. However, we note that our decision not to require section 9 regulatory fee payments for AM Expanded Band stations is not a permanent exemption from regulatory fees for AM Expanded Band Radio Service. Because the movement to the expanded band is voluntary and helps to reduce interference in the standard bandwidth, we will continue our policy of not subjecting this relatively small

group of stations to regulatory fees. However, at some future point when the migration of standard band broadcasters to the Expanded Band has advanced, we may consider establishing \$9 regulatory fee requirements for AM Expanded Band stations.

d. Effective Date of Payment of Multi-Year Wireless Fees

26. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a general fee category known as multi-year wireless fees. Regulatory fees for this category are generally paid in advance, and for the amount of the entire 5-year or 10-year term of the license. Because regulatory fees are paid at the time of license renewal (or at the time of a new application), these fees can be paid at any time during the fiscal year. As a result, there has been some confusion as to the regulatory fee rate that should apply at the time of license renewal. Current fiscal year regulatory fees generally become effective 30 or 60 days after publication of the fees *Order* in the **Federal Register**, or in some instances, 90 days after delivery of the Order to Congress. Current procedures regarding the renewal of multi-year wireless fees stipulate that licensees may submit their fee payments no more than 90 calendar days prior to the expiration of their licenses. The regulatory fee rate that applies at the time of renewal (or at the time of an application for a new license) depends on the date that payment is physically received within the 90 day period, and how this date relates to the "effective date" of the current fiscal year regulatory fees. Generally, the "effective date" of the current fiscal year regulatory fees is published in our fee public notices soon after the *Order* is released. If the renewal payment (or application of a new license) is physically received before the "effective date," the prior fiscal year regulatory fee rate applies. If the renewal payment (or application of a new license) is physically received on or after the "effective date," the current fiscal year regulatory fee rate applies.

11. Notification, Assessment and Collection of Regulatory Fees

27. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Accordingly, in FY 2005, as in prior years, we will make available to all regulatees these public notices, fact sheets and other relevant fee payment information on our Web site at <http://www.fcc.gov/fees/regfees.html>. In the

event that regulatees do not have access to the Internet, we will mail public notices and other relevant materials upon request. Regulatees and the general public may request such information by contacting the FCC CORES HelpDesk at (877) 480–3201, Option 4.

28. In addition to making the above information available on-line for all of our regulatees, we proposed in our *FY 2005 NPRM* to send specific regulatory fee assessments or bills by surface mail to regulatees in a select group of fee categories.<sup>33</sup> We are pursuing our billing initiatives as part of our effort to modernize our financial practices. Eventually, we may expand our billing initiatives to include all regulatory fee service categories. For now, based on the results of our assessment and billing initiatives from last year, and the resources currently available to us, we will proceed with our various FY 2005 initiatives as described below.

a. Interstate Telecommunications Service Providers (ITSPs)

29. In FY 2001, we began sending pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee.<sup>34</sup> The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A report, which carriers are required to submit by April 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159–W to simplify the regulatory fee payment process.<sup>35</sup> In FY 2004, we generated and mailed the same pre-completed FCC Form 159–W's to carriers under the same dissemination procedures, but we informed them that we will be treating the amount due on Form 159–W as a *bill*, rather than as an

<sup>33</sup> *FY 2005 NPRM*, 70 FR at 9575, paras. 38–61. We clarify the distinction between an assessment and a bill. An "assessment" is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee). An assessment is not entered into the Commission's accounts receivable system as a current debt. A "bill" is automatically entered into our financial records as a debt owed to the Commission. Bills reflect the amount owed and have a due date of the last day of the fee payment window. Consequently, if a bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. See also 47 CFR 1.1161(c), 1.1164(f)(5), 1.1910.

<sup>34</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order*, 16 FCC Rcd 13525, at 13590, para. 67 (2001) (*FY 2001 Report and Order*). See also FCC Public Notice—Common Carrier Regulatory Fees (August 3, 2001) at 4.

<sup>35</sup> Beginning in FY 2002, the Form 159–W included a payment section that allowed carriers the opportunity to send in Form 159–W in lieu of completing Form 159 Remittance Advice Form.

<sup>29</sup> *Id.* at 9580, para. 31.

<sup>30</sup> *Id.*, para. 33.

<sup>31</sup> *Id.*, para. 34–36.

<sup>32</sup> 47 CFR 1.1162.

assessment. Other than the manner in which Form 159–W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their FY 2004 ITSP regulatory fees. In our *FY 2005 NPRM*, we sought comment on this billing initiative and on ways to improve it.

30. We received no comments or reply comments on our ITSP billing initiative for FY 2005. We will continue our ITSP, Form 159–W, billing initiative in FY 2005.

#### b. Satellite Space Station Licensees

31. In FY 2004, for the first time, we mailed regulatory fee bills through surface mail to all licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (“GSO”) licensees received bills for their operational *satellites*; <sup>36</sup> and non-geostationary orbit space station (“NGSO”) licensees received bills for their *systems*. <sup>37</sup> In our *FY 2005 NPRM*, we proposed to continue our billing initiative for our GSO and NGSO satellite space station categories. We sought comment on this proposal and received comments from the Satellite Industry Association (“SIA”).

32. SIA states that its members experienced a wide range of problems with our billing system in FY 2004. For example, in some cases licensees did not receive a pre-printed bill for all of their space stations. <sup>38</sup> Several satellite operators report that they received bills that substantially undercounted the number of space stations for which they owed fees. However, the bills that were issued in FY 2004 lacked call sign information, making it impossible for most operators to determine which satellites were missing from their bills. SIA offered suggestions for improving the process. <sup>39</sup>

<sup>36</sup> “Satellites” are in operation on the first day of the fiscal year and not co-located with and technically identical to another operational satellite (*i.e.*, not functioning as a spare satellite) on the first day of the fiscal year.

<sup>37</sup> “Systems” are licensed by the Commission and operational on the first day of the fiscal year.

<sup>38</sup> SIA Comments at 11.

<sup>39</sup> *Id.* Specifically, SIA suggests: (1) Licensees should be issued a single bill that lists all the space stations for which the Commission believes the licensee owes fees; (2) call signs should be included on bills so that licensees can verify the accuracy of the billing information; (3) procedures should be in place to permit a bill to be modified or supplemented if it is incorrect; (4) bills should be mailed well in advance of the payment deadline so that licensees have a reasonable period to review the bill, seek additional information, if needed, and correct any errors prior to the payment due date; and (5) the Commission staff members who are knowledgeable about satellite licensing should be

33. We have modified our Fee Filer online payment system so that it will address most of SIA’s suggested corrective measures. <sup>40</sup> We will address SIA’s other suggestions by generating and mailing the bills at the earliest allowable date after this *FY 2005 Order* becomes effective. We will also ensure that we will have knowledgeable staff available to assist licensees with their billing questions and to resolve any bill disputes.

#### c. Media Services Licensees

34. In our *FY 2005 NPRM*, we proposed that we would continue to generate regulatory fee assessment postcards for media services following the same procedures we used in FY 2004. We noted that we mail the postcards on a per-facility basis and that they serve to provide parties with the fee payment due date and the assessed fee amount for the facility (as well as the data attributes that were used to determine the amount). <sup>41</sup> We received no comments or reply comments on our proposal. We will continue our assessment initiative for media services entities as we originally proposed. Specifically, we will mail a single round of postcards to licensees and their other known points of contact in our Consolidated Database System (CDBS) and Commission Registration System (CORES)—our two official databases for media services. By doing so, licensees and their points of contact will all be furnished with the same fee information for the facility in question. The postcards will direct parties to a Commission-authorized Web site to update or correct fee information regarding the facility, or to certify their

available to assist licensees by answering questions and resolving problems.

<sup>40</sup> Although the process of mailing one bill per space station will continue unchanged, Fee Filer will automatically find and consolidate all regulatory fees which have been billed, based upon FCC Registration Number (FRN) and password entered. Information that describes each individual fee will include FRN, call sign, and the fee amount. This information will be subject to review by the Fee Filer user, who can then make modifications, deletions or additions online. After the user confirms the details of each fee, he/she may print a one-page Remittance Voucher which is to accompany the payment. The one-page Remittance Voucher will reflect the total payment and the detail applicable to that summary payment.

<sup>41</sup> Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations, nor will they be issued for them in FY 2005.

fee-exempt status if need be. <sup>42</sup> The postcards will also provide the telephone number of our FCC CORES Help Desk at (877) 480–3201, Option 4, in the event that parties need additional assistance.

35. We emphasize that parties must still submit a completed Form 159 with their fee payment, despite having received an assessment postcard. The postcards are *not* to be used as a substitute for completing a Form 159. We cannot guarantee that a party’s regulatory fees will be posted accurately against its account if a completed Form 159 is not returned with the fee payment. We also emphasize that the *facility ID* is the most important data element that parties need to include on their completed Form 159. The facility ID is a unique identifier that never changes over the course of a facility’s existence (unlike its call sign). We prominently display each facility’s facility ID on its assessment postcard, and our Form 159 filing instructions require that each facility’s facility ID (and call sign) needs to be provided. However, each year we typically receive many incomplete Form 159s that do not provide the facility ID of the facility whose fee is being paid.

#### d. Cable Television Subscribers

36. We adopt our proposal to generate fee assessment letters for cable operators who are on file as having paid FY 2004 regulatory fees for their basic cable subscribers. <sup>43</sup> We received no comments or reply comments on this issue. Under our proposal, our assessment letter to each operator would announce the due date for payment of FY 2005 regulatory fees; reflect the subscriber count for which the operator paid FY 2004 regulatory fees; and request that the operator access a Commission-authorized Web site to provide its aggregate count of basic cable subscribers as of December 31, 2004—the date that cable operators are to use as the basis for determining their regulatory fee obligations for basic cable subscribers. If the number of subscribers as of December 31, 2004 differs from the number paid for FY 2004, operators would be required to provide a brief explanation for the differing subscriber counts and indicate when the difference occurred. Cable operators who do not have access to the Internet would be able to contact the FCC CORES Help Desk at (877) 480–3201, Option 4, to provide their subscriber count as of

<sup>42</sup> The Commission-authorized Web site will be available on-line throughout this summer. The site’s Web address is <http://www.fccfees.com>.

<sup>43</sup> *FY 2005 NPRM*, 70 FR at 9583, para. 57.

December 31, 2004. Payment procedures for FY 2005 regulatory fees are the same as they were in previous years. For example, cable operators are to complete the FCC Form 159 Remittance Advice when making their payment, and are to certify their December 31, 2004 subscriber count in Block 30 of the Form 159.

37. We also sought comment on a proposal to require the cable television operators to annually report their basic subscriber counts to the Commission prior to paying regulatory fees for the fiscal year in question.<sup>44</sup> The Commission proposed to use the reported subscriber counts to audit regulatory fee payments that are collected later in the fiscal year. NCTA was the only commenter on this proposal. NCTA agreed that a June 1st reporting requirement could be met with accurate subscriber information from the previous year and would not be unduly burdensome for operators to file.<sup>45</sup> We do not adopt a subscriber reporting requirement at this time. We will continue to assess our need for information to manage the regulatory fee assessment program and may revisit this issue in the future.

#### *B. FY 2005 Fee Determination and FY 2004 Reconsideration*

##### 12. Commercial Mobile Radio Service (CMRS) Providers

38. In this section, we address the arguments presented by Cingular and CTIA in their comments to the *FY 2005 NPRM*. In addition, we address Cingular's petition for reconsideration of the Commission's *FY 2004 Report and Order* and the comments filed in response to Cingular's petition.<sup>46</sup>

39. Prior to FY 2004, the Commission relied on Cellular, PCS, and SMR providers to compute and submit the regulatory fee applicable to them based on the number of their subscribers. Beginning in fiscal year 2004, the Commission decided to take an alternative approach and adopted a system of mailing assessments to Cellular, PCS, and SMR providers based on subscriber data contained in their

Numbering Resource Utilization Forecast (NRUF) reports.<sup>47</sup> NRUF data is collected by the North American Numbering Plan Administrator (NANPA) to monitor the utilization of telephone numbers by carriers. For purposes of assessing regulatory fees, the Commission uses the count of "assigned" telephone numbers (TN's)<sup>48</sup> stated by carriers in their NRUF reports (adjusted for porting).<sup>49</sup> For carriers not required to file NRUF reports, the self-computation method still applies.<sup>50</sup>

40. We disagree with the arguments of Cingular, CTIA, and others that the NRUF data are not sufficiently accurate for the purpose of assessing regulatory fees for the three classes of Commercial Mobile Radio Service (CMRS) providers—the Cellular Radiotelephone Service, the Personal Communications Service (PCS), and the Specialized Mobile Radio (SMR) Service. Evidence of the accuracy and reliability of the NRUF data can be found in the fact that while the initial FY 2004 assessment letters calculated regulatory fees based on approximately 162.36 million numbers, the reconciliation process, based on provider responses, revised the regulatory fee assessment by only 1.4 percent (to 160.02 million numbers). Further evidence of the reliability of the NRUF data is that in FY 2004, we issued 127 initial assessment letters to CMRS providers. Only 3.2 percent of the respondents had adjustments of greater than 5,000 subscribers but less than 20,000; and only 5.5 percent had adjustments of greater than 20,000 subscribers. This experience indicates that NRUF data is sufficiently reliable and accurate for the purposes of assessing section 9 regulatory fees. We therefore reject Cingular's request to reconsider the use of NRUF data in calculating FY 2004 fees for these three classes of CMRS carriers. We will also continue to rely on the NRUF data for the FY 2005 regulatory fee assessments for these carriers.

41. Further, we find no basis for the assertion in Cingular's petition that a lack of clarity in the NRUF definition of "intermediate" TN's (number made

available for use by another telecommunications carrier or non-carrier entity) unduly complicates the correction process and makes the NRUF data unreliable.<sup>51</sup> The Commission's fee assessment is based only on the number of "assigned" TN's stated in the NRUF report. Thus, to the extent that a carrier categorizes TN's as "intermediate," it has no need to make a correction.

42. These facts suggest that using NRUF data has not led to inaccurate or unfair assessments for CMRS providers. They also demonstrate that the Commission has a method to address and correct for potential anomalies that the NRUF data may implicate. We therefore disagree with Cingular and others that using NRUF data, combined with the reconciliation process, may result in overpayment of regulatory fees.<sup>52</sup> In fact, using NRUF data, which is subject to verification, will likely produce more accurate assessments than the self-assessment method the Commission previously used. Our experience in FY 2004 indicates that—far from being overly burdensome—this process offers CMRS providers an opportunity to correct potential errors in their data for section 9 regulatory fee assessment purposes.<sup>53</sup>

43. We also reject the arguments of Cingular and others that the two-step process that we established in the *FY 2004 Report and Order*—sending an initial assessment letter, which a CMRS provider may correct, followed by a final assessment letter—is unduly burdensome.<sup>54</sup> Cingular maintains that the correction process contemplates a burdensome number-by-number reconciliation of the NRUF data and a carrier's actual subscriber count. We clarify that carriers are not required to perform number-by-number reconciliations when making corrections. Carriers may make corrections on an aggregate basis. We will review the letters, and decide whether to accept the revised totals. Based upon this feedback, we will send out a second assessment letter that will coincide with the payment period of regulatory fees. This second assessment letter with aggregate totals will constitute the basis upon which FY 2005 regulatory fees will be paid. If we receive no response to our initial assessment letter within 21 days, we will assume that no corrections are required and the final assessment letter, which is mailed approximately 30 days

<sup>44</sup> *Id.*, paras. 60–61.

<sup>45</sup> NCTA Comments at 2.

<sup>46</sup> See Cingular Wireless LLC Petition for Reconsideration, MD Docket No. 04–73, filed Aug. 6, 2004 (*Cingular Petition*). We received comments in support of the *Cingular Petition* from CTIA—The Wireless Association<sup>TM</sup> (CTIA) and joint comments from seven wireless carriers (American Cellular Corporation, AT&T Wireless Services, Inc., Dobson Cellular Systems, Inc., Nextel Communications, Inc., Sprint Corporation, T-Mobile USA, Inc., and Western Wireless Corporation) (Wireless Carriers). We also received reply comments in support of the petition from the Rural Telecommunications Group, Inc. (RTG).

<sup>47</sup> *FY 2004 Report and Order*, 19 FCC Rcd at 11,675–76 para. 45.

<sup>48</sup> "Assigned" numbers are "numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending." Instructions for Utilization and Forecast Forms, FCC Form 502 (Jun. 2003).

<sup>49</sup> The porting information is developed from the telephone number porting database managed by the Local Number Portability Administrator, NeuStar, Inc.

<sup>50</sup> *FY 2004 Report and Order*, 19 FCC Rcd at 11,677 para. 49.

<sup>51</sup> *Cingular Petition* at 4–5.

<sup>52</sup> *Cingular Petition* at 3, 5–6.

<sup>53</sup> *Cingular Petition* at 5–6. See also CTIA Comments at 3.

<sup>54</sup> *Cingular Petition* at 5–6.



after the initial letter, will base the fee payment due on the number of subscribers listed on the initial assessment. In response to Cingular's questions as to whether the Commission intends to allow carriers to correct so-called "contaminated numbers" (numbers used by a thousands-block carrier before donating the remainder of the block to the pool),<sup>55</sup> we clarify that carriers are permitted to address "contaminated numbers." Paragraph 46 of the *FY 2004 Report and Order* specifically links the correction process with the problem of "contaminated numbers." To the extent that paragraph 46 of the *FY 2004 Report and Order* does not unequivocally provide that carriers may correct the initial assessment letter to account for "contaminated numbers," we hereby clarify that they may do so.

44. We will continue to use the two-step process for assessing section 9 regulatory fees on CMRS providers as proposed in the *FY 2005 NPRM*.<sup>56</sup> Specifically, we will continue to mail an initial regulatory fee assessment to CMRS providers based on information they submit on their NRUF forms. The initial assessment letter will include a list of the carriers' Operating Company Numbers (OCNs), and an aggregate total of assigned numbers (adjusted for porting) upon which the assessment is based.<sup>57</sup> If the number of subscribers on the initial assessment letter differs from the data included on their NRUF forms, CMRS providers may amend their initial assessment letter to identify their subscriber count as of December 31, 2004.

### III. Procedural Matters

#### A. Payment of Regulatory Fees

##### 1. De Minimis Fee Payment Liability

45. As in the past, regulatees whose total FY 2005 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than \$10 will be exempted from payment of FY 2005 regulatory fees.

<sup>55</sup> *Cingular Petition* at 3.

<sup>56</sup> See *FY 2005 NPRM*, 70 FR at 9579, para. 51–52.

<sup>57</sup> Additionally, paragraph 48 of the *FY 2004 Report and Order* indicates that "[i]f some subscribers are no longer customers, but have been assigned to another company, please indicate the company which has acquired these subscribers." Cingular suggests that it is unnecessary to report numbers because the Commission already takes ported numbers into account using the LNP database. *Cingular Petition* at 3. We agree with Cingular that it is generally unnecessary to correct ported numbers.

##### 2. Standard Fee Calculations and Payment Dates for Annual Regulatory Fees

46. The responsibility for payment of annual regulatory fees by service category is as follows:<sup>58</sup>

(a) *Media Services*: The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) *Wireline (Common Carrier) Services*: Fees must be paid for any authorization issued on or before October 1, 2004. However, where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) *Wireless Services*: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Fees must be paid for any authorization issued on or before October 1, 2004. The number of subscribers, units or circuits on December 31, 2004 will be used as the basis from which to calculate the fee payment.

(d) *Multichannel Video Programming Distributor Services (basic cable television subscribers and CARS licenses)*: The number of subscribers on December 31, 2004 will be used as the basis from which to calculate the fee payment.<sup>59</sup> For CARS licensees, fees must be paid for any authorization issued on or before October 1, 2004. The responsibility for the payment of regulatory fees for CARS licenses rests with the holder of the permit or license on October 1, 2004. However, in instances where a CARS license or permit is transferred or assigned after October 1, 2004, responsibility for

<sup>58</sup> Note that regulatees in the service categories that are shaded in grey in Attachment D do not pay annual regulatory fees. We collect regulatory fees from these entities in advance to cover the term of license. Fee payments from these entities are submitted along with their initial authorization or renewal application when that application is filed.

<sup>59</sup> Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service customers. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2004, rather than on a count as of December 31, 2004.

payment rests with the holder of the license or permit at the time payment is due.

(e) *International Services*: For earth stations and geostationary orbit space stations, payment is calculated on a per operational station basis. For non-geostationary orbit satellite systems, payment is calculated on a per operational system basis. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due. For *international bearer circuits*, payment is calculated on a per active circuit basis as of December 31, 2004.

47. We strongly recommend that entities who will be submitting more than twenty-five (25) Form 159–C's use the electronic Fee Filer program when sending their regulatory fee payment. We will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

##### 3. Limitations on Credit Card Transactions

48. The U.S. Treasury has advised the Commission that it may begin rejecting Credit Card transactions greater than \$99,999.99 from a single credit card in a single day. The U.S. Treasury has published Bulletin No. 2005–03 in which Federal Agencies are directed to limit credit card collections per these rules. The Commission will institute policies to conform to the U.S. Treasury policy. Entities needing to remit amounts of \$100,000.00 or greater should use check, ACH or Fed Wire payment methods. Additional information can be found at <http://www.fcc.gov/fees>.

#### B. Enforcement

49. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, Failure to pay regulatory fees and/or any late payment penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges



will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window.

50. Furthermore, we amended our regulatory fee rules effective November 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

#### C. Congressional Review Act Analysis

51. The Commission will send a copy of this *Order in MD Docket No. 05-59 and Order on Reconsideration in MD Docket No. 04-73* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### IV. Ordering Clauses

52. Accordingly, *it is ordered* pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r) that the FY 2005 9 regulatory fee assessment requirements *are adopted* as specified herein.

53. *It is further ordered*, pursuant to sections 4(i) and (j), 9, 303(r), and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 159, 303(r), and 405, 47 U.S.C. 405 and 47 CFR 1.106 that the Petition for Reconsideration, filed August 6, 2004, by Cingular Wireless LLC *is denied*.

54. *It is further ordered* that part 1 of the Commission's rules are amended as set forth in Attachment G, and that these rules shall become effective August 22, 2005.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order in MD Docket No. 05-59 and Order on Reconsideration in MD Docket No. 04-73*, including the Final

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

56. *It is further ordered* that this proceeding is *terminated*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

#### Attachment A—Final Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act (RFA),<sup>60</sup> the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in its *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2005*. Written public comments were sought on the FY 2005 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>61</sup>

#### I. Need for, and Objectives of, the Proposed Rules

58. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of \$280,098,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

#### II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

59. None.

#### III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

60. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.<sup>62</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>63</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small

Business Act.<sup>64</sup> A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>65</sup>

61. Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>66</sup>

62. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.<sup>67</sup>

63. Small Governmental Jurisdictions. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>68</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>69</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

64. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>70</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>71</sup>

<sup>64</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*."

<sup>65</sup> 15 U.S.C. 632.

<sup>66</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>67</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>68</sup> 5 U.S.C. 601(5).

<sup>69</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

<sup>70</sup> 15 U.S.C. 632.

<sup>71</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition

<sup>60</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>61</sup> 5 U.S.C. 604

<sup>62</sup> 5 U.S.C. 603(b)(3).

<sup>63</sup> 5 U.S.C. 601(6).

We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

65. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>72</sup> According to Commission data,<sup>73</sup> 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

66. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>74</sup> According to Commission data,<sup>75</sup> 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or

fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by these rules.

67. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>76</sup> According to Commission data,<sup>77</sup> 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by these rules.

68. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>78</sup> According to Commission data,<sup>79</sup> 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

69. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>80</sup> According to Commission data,<sup>81</sup> 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more

than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

70. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>82</sup> According to Commission data,<sup>83</sup> 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

71. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>84</sup> According to Commission data,<sup>85</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

72. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>86</sup> According to Commission data,<sup>87</sup> 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority

of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. See 13 CFR 121.102(b).

<sup>72</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 13310 in October 2002).

<sup>73</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

<sup>74</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>75</sup> "Trends in Telephone Service" at Table 5.3.

<sup>76</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>77</sup> "Trends in Telephone Service" at Table 5.3.

<sup>78</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>79</sup> "Trends in Telephone Service" at Table 5.3.

<sup>80</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>81</sup> "Trends in Telephone Service" at Table 5.3.

<sup>82</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>83</sup> "Trends in Telephone Service" at Table 5.3.

<sup>84</sup> 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

<sup>85</sup> "Trends in Telephone Service" at Table 5.3.

<sup>86</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>87</sup> "Trends in Telephone Service" at Table 5.3.

of prepaid calling card providers are small entities that may be affected by these rules.

73. 800 and 800-Like Service Subscribers.<sup>88</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>89</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.<sup>90</sup> According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

74. International Service Providers. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts.<sup>91</sup> For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.<sup>92</sup> Of this total, 273 firms had annual receipts of under \$10 million, and an additional 24

firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

75. The second category—Other Telecommunications—includes “establishments primarily engaged in \* \* \* providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>93</sup> According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.<sup>94</sup> Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional six firms had annual receipts of \$10 million to \$24,999,999. Thus, under this second size standard, the majority of firms can be considered small.

76. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>95</sup> and “Cellular and Other Wireless Telecommunications.”<sup>96</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>97</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.<sup>98</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977

firms in this category, total, that operated for the entire year.<sup>99</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>100</sup> Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

77. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments “primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.”<sup>101</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.<sup>102</sup> According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.<sup>103</sup> Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999.<sup>104</sup> Thus, under this size standard, the great majority of firms can be considered small entities.

78. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.”<sup>105</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the

<sup>88</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>100</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>101</sup> Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, “On-Line Information Services” (changed to current name and to code 518111 in October 2002).

<sup>102</sup> 13 CFR 121.201, NAICS code 518111.

<sup>103</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

<sup>104</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

<sup>105</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>88</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>89</sup> 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

<sup>90</sup> FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

<sup>91</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

<sup>92</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513340 (issued October 2000).

<sup>93</sup> Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

<sup>94</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513390 (issued October 2000).

<sup>95</sup> 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

<sup>96</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>97</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

<sup>98</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

entire year.<sup>106</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>107</sup> Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.<sup>108</sup> We have estimated that 294 of these are small, under the SBA small business size standard.<sup>109</sup>

79. Common Carrier Paging. The SBA has developed a small business size standard for wireless firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."<sup>110</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>111</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.<sup>112</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

<sup>106</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>107</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

<sup>108</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (August 2003). This source uses data that are current as of December 31, 2001.

<sup>109</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (August 2003). This source uses data that are current as of December 31, 2001.

<sup>110</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>111</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

<sup>112</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

80. In the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>113</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>114</sup> The SBA has approved this definition.<sup>115</sup> An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>116</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>117</sup> An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>118</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>119</sup> Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or "other mobile" services.<sup>120</sup> Of these, we estimate that 589 are small,

<sup>113</sup> Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (Paging Second Report and Order); see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

<sup>114</sup> Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

<sup>115</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>116</sup> See "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>117</sup> See "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>118</sup> See "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>119</sup> See "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).

<sup>120</sup> See Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

under the SBA-approved small business size standard.<sup>121</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

81. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>122</sup> The SBA has approved these definitions.<sup>123</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

82. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>124</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>125</sup> According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in wireless telephony.<sup>126</sup> We have estimated that 294 of these are small under the SBA small business size standard.

83. Broadband Personal Communications Service. The

<sup>121</sup> 13 CFR 121.201, NAICS code 517211.

<sup>122</sup> Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>123</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>124</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>125</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>126</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (August 2003). This source uses data that are current as of December 31, 2001.

broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>127</sup> For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>128</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>129</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>130</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>131</sup>

84. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.<sup>132</sup> Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

#### 85. Narrowband Personal Communications Services. The

<sup>127</sup> See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); see also 47 CFR 24.720(b).

<sup>128</sup> See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, para. 60.

<sup>129</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>130</sup> FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (released January 14, 1997).

<sup>131</sup> See "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>132</sup> See "C and F Block Broadband PCS Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less.<sup>133</sup> Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.<sup>134</sup> To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.<sup>135</sup> A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>136</sup> A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>137</sup> The SBA has approved these small business size standards.<sup>138</sup> A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.<sup>139</sup> Three of these claimed status as a small

<sup>133</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).

<sup>134</sup> See "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674," *Public Notice*, PNWL 94–004 (released Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787," *Public Notice*, PNWL 94–27 (released Nov. 9, 1994).

<sup>135</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>136</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>137</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

<sup>138</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>139</sup> See "Narrowband PCS Auction Closes," *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

or very small entity and won 311 licenses.

86. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>140</sup> We have defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>141</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>142</sup> Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>143</sup> The SBA has approved these small size standards.<sup>144</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RsAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>145</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>146</sup> Seventeen winning bidders

<sup>140</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>141</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

<sup>142</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

<sup>143</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1088, para. 173 (2002).

<sup>144</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

<sup>145</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>146</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>147</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>147</sup>

87. Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band.<sup>148</sup> This auction, previously scheduled for January 13, 2003, has been postponed.<sup>149</sup>

88. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>150</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>151</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>152</sup> SBA approval of these definitions is not required.<sup>153</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>154</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight

of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>155</sup>

89. Specialized Mobile Radio. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>156</sup> The Commission awards "very small entity" bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>157</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>158</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>159</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>160</sup>

90. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>161</sup> In an auction completed on

December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.<sup>162</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

91. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

92. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>163</sup> According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.<sup>164</sup> If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses

Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 17162 (2000).

<sup>162</sup> See, "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

<sup>163</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>164</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513322 (October 2000).

<sup>148</sup> Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

<sup>149</sup> See "Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled," *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

<sup>150</sup> See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

<sup>151</sup> See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>152</sup> See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

<sup>153</sup> See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

<sup>154</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>155</sup> See "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>156</sup> 47 CFR 90.814(b)(1).

<sup>157</sup> 47 CFR 90.814(b)(1).

<sup>158</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>159</sup> See "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>160</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>161</sup> See, "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and

under the SBA's small business standard.

93. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>165</sup> This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>166</sup> A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>167</sup> The SBA has approved these small size standards.<sup>168</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>169</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.<sup>170</sup> Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>171</sup> A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.<sup>172</sup>

<sup>165</sup> Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

<sup>166</sup> *Id.* at 11068, paras. 291.

<sup>167</sup> *Id.*

<sup>168</sup> See Letter to Daniel Phytton, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>169</sup> See generally "220 MHz Service Auction Closes," *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

<sup>170</sup> See "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

<sup>171</sup> See "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

<sup>172</sup> See "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

94. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for "Cellular and Other Wireless Telecommunications." This definition provides that a small entity is any such entity employing no more than 1,500 persons.<sup>173</sup> The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PLMR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.<sup>174</sup>

95. The Commission's 1994 Annual Report on PLMRs<sup>175</sup> indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

96. Fixed Microwave Services. Fixed microwave services include common carrier,<sup>176</sup> private operational-fixed,<sup>177</sup> and broadcast auxiliary radio

services.<sup>178</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.<sup>179</sup> The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

97. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>180</sup> An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>181</sup> The SBA has approved these small business size standards.<sup>182</sup> The auction of the 2,173

<sup>178</sup> Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. See 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

<sup>179</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>180</sup> See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order*, 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

<sup>181</sup> *Id.*

<sup>182</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (VoIP);



39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies herein.

98. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.<sup>183</sup> The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>184</sup> An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>185</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>186</sup> There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32

small and very small business winning that won 119 licenses.

99. 218–219 MHz Service. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).<sup>187</sup> Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>188</sup> In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>189</sup> A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.<sup>190</sup> The SBA has approved of these definitions.<sup>191</sup> At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

100. Location and Monitoring Service (LMS). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined

"small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>192</sup> A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million.<sup>193</sup> These definitions have been approved by the SBA.<sup>194</sup> An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

101. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>195</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>196</sup> The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.<sup>197</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

102. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.<sup>198</sup> We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an

See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

<sup>183</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>184</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>185</sup> See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making*, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

<sup>186</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>187</sup> See "Interactive Video and Data Service (IVDS) Applications Accepted for Filing," *Public Notice*, 9 FCC Rcd 6227 (1994).

<sup>188</sup> Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

<sup>189</sup> Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

<sup>190</sup> *Id.*

<sup>191</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

<sup>192</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 para. 20 (1998); see also 47 CFR 90.1103.

<sup>193</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192, para. 20; see also 47 CFR 90.1103.

<sup>194</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

<sup>195</sup> The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

<sup>196</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

<sup>197</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>198</sup> The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

entity employing no more than 1,500 persons.<sup>199</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

103. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.<sup>200</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>201</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

104. Offshore Radiotelephone Service. This service operates on several ultra high frequencies (UHF) television

broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>202</sup> There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>203</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>204</sup>

105. Multiple Address Systems (MAS). Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than \$15 million in the three previous calendar years.<sup>205</sup> "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years.<sup>206</sup> The SBA has approved of these definitions.<sup>207</sup> The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.<sup>208</sup> Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

106. With respect to the second category, which consists of entities that

use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the "Cellular and Other Wireless Telecommunications" definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.<sup>209</sup> The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

107. Incumbent 24 GHz Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.<sup>210</sup> According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.<sup>211</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>212</sup> Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>213</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may

<sup>199</sup> 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

<sup>200</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>201</sup> Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

<sup>202</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 CFR 22.1001–22.1037.

<sup>203</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>204</sup> *Id.*

<sup>205</sup> See Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008, para. 123 (2000).

<sup>206</sup> *Id.*

<sup>207</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

<sup>208</sup> See "Multiple Address Systems Spectrum Auction Closes," *Public Notice*, 16 FCC Rcd 21011 (2001).

<sup>209</sup> See 13 CFR 121.201, NAICS code 517212.

<sup>210</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>211</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued October 2000).

<sup>212</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

<sup>213</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

108. Future 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.<sup>214</sup> "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>215</sup> The SBA has approved these definitions.<sup>216</sup> The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

109. Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).<sup>217</sup> In connection with the 1996 MDS auction, the Commission defined—"small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>218</sup> The SBA has approved of this standard.<sup>219</sup> The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading

Areas (BTAs).<sup>220</sup> Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.<sup>221</sup>

110. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,<sup>222</sup> which includes all such companies generating \$12.5 million or less in annual receipts.<sup>223</sup> According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.<sup>224</sup> Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.<sup>225</sup> Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

111. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities.<sup>226</sup> There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

112. Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual

receipts as a small business.<sup>227</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>228</sup> According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>229</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,053 low power television stations (LPTV).<sup>230</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

113. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the

<sup>214</sup> Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967, para. 77 (2000) (24 GHz Report and Order); see also 47 CFR 101.538(a)(2).

<sup>215</sup> 24 GHz Report and Order, 15 FCC Rcd at 16967, para. 77; see also 47 CFR 101.538(a)(1).

<sup>216</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

<sup>217</sup> Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Report and Order*, 10 FCC Rcd 9589, 9593, para. 7 (1995) (MDS Auction R&O).

<sup>218</sup> 47 CFR 21.961(b)(1).

<sup>219</sup> See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of \$40 million size standard for MDS auction).

<sup>220</sup> Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

<sup>221</sup> 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 CFR 121.201, NAICS code 517910.

<sup>222</sup> 13 CFR 121.201, NAICS code 517510.

<sup>223</sup> *Id.*

<sup>224</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4 (issued October 2000).

<sup>225</sup> *Id.*

<sup>226</sup> In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

<sup>227</sup> See OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

<sup>228</sup> OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See *id.* at 502–05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

<sup>229</sup> "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 121.103(a)(1).

<sup>230</sup> FCC News Release, "Broadcast Station Totals as of September 30, 2004."

entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

114. Radio Broadcasting. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.<sup>231</sup> Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”<sup>232</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations<sup>233</sup> are included.<sup>234</sup> Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

115. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.<sup>235</sup>

116. The Commission estimates that there are approximately 3,868 FM translators and boosters.<sup>236</sup> The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does

not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (\$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act’s definition of a “small business concern” because they are not independently owned and operated.<sup>237</sup>

117. Cable and Other Program Distribution. This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually.<sup>238</sup> According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.<sup>239</sup> Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies herein.

118. Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission’s rules, a “small cable company” is one serving fewer than 400,000 subscribers nationwide.<sup>240</sup> The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system

operators at the end of 1995.<sup>241</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies herein.

119. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>242</sup> The Commission has determined that there are 65,000,000 subscribers in the United States.<sup>243</sup> Therefore, an operator serving fewer than 650,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>244</sup> Based on available data, the Commission estimates that the number of cable operators serving 650,000 subscribers or fewer, totals 1,450.<sup>245</sup> The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>246</sup> and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

120. Open Video Services. Open Video Service (OVS) systems provide subscription services.<sup>247</sup> The SBA has created a small business size standard for Cable and Other Program

<sup>231</sup> See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

<sup>232</sup> Id.

<sup>233</sup> “Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 CFR 121.103(a)(1).

<sup>234</sup> “SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size.” 13 CFR 121(a)(4).

<sup>235</sup> 13 CFR 121.201, NAICS codes 513111 and 513112.

<sup>236</sup> FCC News Release, “Broadcast Station Totals as of September 30, 2004.”

<sup>237</sup> 15 U.S.C. 632.

<sup>238</sup> 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

<sup>239</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization)”, Table 4, NAICS code 513220 (issued October 2000).

<sup>240</sup> 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

<sup>241</sup> Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

<sup>242</sup> 47 U.S.C. 543(m)(2).

<sup>243</sup> See FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice*, DA 01-158 (January 24, 2001).

<sup>244</sup> 47 CFR 76.901(f).

<sup>245</sup> See FCC Announces New Subscriber Count for the Definition of Small Cable Operators, *Public Notice*, DA-01-0158 (released January 24, 2001).

<sup>246</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules. See 47 CFR 76.909(b).

<sup>247</sup> See 47 U.S.C. 573.

Distribution.<sup>248</sup> This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>249</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies herein.

121. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than \$12.5 million.<sup>250</sup> According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.<sup>251</sup> Of this total, 1,180 firms had annual receipts of \$10 million or less, and an additional 52 firms had receipts of \$10 million or more but less than \$25 million.<sup>252</sup> Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies herein.

122. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.<sup>253</sup> Accordingly, there are no licensees in this service.

123. Amateur Radio Service. These licensees are believed to be individuals, and therefore are not small entities.

124. Aviation and Marine Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.<sup>254</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>255</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

125. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.<sup>256</sup> These services include Citizen Band Radio

Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).<sup>257</sup> There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by these rules. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.<sup>258</sup> Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by these rules.

126. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>259</sup>

<sup>257</sup> The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR part 95.

<sup>258</sup> 13 CFR 121.201, NAICS Code 517212.

<sup>259</sup> With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service

<sup>248</sup> 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

<sup>249</sup> See <http://www.fcc.gov/csb/ovs/csovscer.html> (current as of March 2002).

<sup>250</sup> 13 CFR 121.201, NAICS code 517510.

<sup>251</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4 (issued October 2000).

<sup>252</sup> *Id.*

<sup>253</sup> “Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004,” *Public Notice*, DA 03–2354 (August 28, 2003).

<sup>254</sup> 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>255</sup> Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

<sup>256</sup> 47 CFR part 90.

There are a total of approximately 127,540 licensees in these services. Governmental entities<sup>260</sup> as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.<sup>261</sup>

#### IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

127. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.<sup>262</sup> Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159.

(EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

<sup>260</sup> 47 CFR 1.1162.

<sup>261</sup> 5 U.S.C. 601(5).

<sup>262</sup> The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than \$10.

Compliance with the fee schedule will require some licensees to tabulate the number of units (e.g., cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

128. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

129. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.<sup>263</sup> If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.<sup>264</sup> Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.<sup>265</sup> Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 104–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.<sup>266</sup>

130. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.<sup>267</sup> However, timely submission of the required regulatory

fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

#### V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

131. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

132. *The Omnibus Appropriations Act for FY 2005*, Public Law 108–447, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2005.<sup>268</sup> As noted, we sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

133. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact

<sup>263</sup> 47 CFR 1.1164.

<sup>264</sup> 47 CFR 1.1164(c).

<sup>265</sup> Public Law 104–134, 110 Stat. 1321 (1996).

<sup>266</sup> 31 U.S.C. 7701(c)(2)(B).

<sup>267</sup> 47 CFR 1.1166.

<sup>268</sup> 47 U.S.C. 159(a).

on smaller entities. The methodology we are using in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

134. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 261, *supra*.

135. *Report to Small Business Administration*: The Commission will send a copy of this *Report and Order*, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

136. *Report to Congress*: The Commission will send a copy of this Final Regulatory Flexibility Analysis (FRFA), along with this *Report and Order*, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

#### Attachment B—Sources of Payment Unit Estimates for FY 2005

In order to calculate individual service fees for FY 2005, we adjusted FY 2004 payment units for each service to more accurately reflect expected FY 2005 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2005 estimates with actual FY 2004 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated *exactly*. These include an unknown number of waivers and/or exemptions that may occur in FY 2005 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2005 payment units are based on FY 2004 actual payment units, it does not necessarily mean that our FY 2005 projection is *exactly* the same number as FY 2004. It means that we have either rounded the FY 2005 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services .....	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services .....	Based on Wireless Telecommunications Bureau Competition Report estimates.
AM/FM Radio Stations .....	Based on estimates from Media Services Bureau estimates, adjusted for exemptions, and actual FY 2004 payment units.
UHF/VHF Television Stations .....	Based on Media Services Bureau estimates and actual FY 2004 payment units.
AM/FM/TV Construction Permits .....	Based on Media Services Bureau estimates and actual FY 2004 payment units.
LPTV, Translators and Boosters .....	Based on actual FY 2004 payment units.
Broadcast Auxiliaries .....	Based on actual FY 2004 payment units.
BRS (formerly MDS/MMDS) .....	Based on Wireless Telecommunications Bureau estimates and actual FY 2004 payment units.
Cable Television Relay Service (CARS) Stations.	Based on actual FY 2004 payment units.
Cable Television System Subscribers .....	Based on Media Services Bureau industry estimates of subscribership, and actual FY 2004 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2004 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2005 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations .....	Based on actual FY 2004 payment estimates and projected FY 2005 units.
Space Stations (GSOs & NGSOs) .....	Based on International Bureau licensee data base estimates.
International Bearer Circuits .....	Based on FY 2004 actual paid units, and adjusted for growth.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

#### ATTACHMENT C.—CALCULATION OF FY 2005 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2005 payment units	Years	FY 2004 revenue estimate	Pro-rated FY 2005 revenue requirement*	Computed new FY 2005 regulatory fee	Rounded new FY 2005 regulatory fee	Expected FY 2005 revenue
PLMRS (Exclusive use) .....	3,700	10	340,000	349,068	9	10	370,000
PLMRS (Shared use) .....	46,000	10	2,300,000	2,361,342	5	5	2,300,000
Microwave .....	2,600	10	1,500,000	1,540,006	59	60	1,560,000
218–219 MHz (Formerly IVDS) .....	3	10	1,500	1,540	51	50	1,500
Marine (Ship) .....	7,000	10	585,000	600,602	9	10	700,000



## ATTACHMENT C.—CALCULATION OF FY 2005 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2005 payment units	Years	FY 2004 revenue estimate	Pro-rated FY 2005 revenue requirement *	Computed new FY 2005 regulatory fee	Rounded new FY 2005 regulatory fee	Expected FY 2005 revenue
GMRS .....	21,000	5	375,000	385,001	4	5	525,000
Aviation (Aircraft) .....	7,400	10	155,000	159,134	2	5	370,000
Marine (Coast) .....	1,000	10	96,200	98,766	10	10	100,000
Aviation (Ground) .....	1,600	5	120,000	123,200	15	15	120,000
Amateur Vanity Call Signs .....	7,600	10	162,119	166,443	2.19	2.19	166,443
AM Class A .....	66	1	198,375	203,666	3,086	3,075	202,950
AM Class B .....	1,592	1	2,421,075	2,485,646	1,561	1,550	2,467,600
AM Class C .....	956	1	841,500	863,943	904	900	860,400
AM Class D .....	1,769	1	2,784,800	2,859,072	1,616	1,625	2,874,625
FM Classes A, B1 & C3 .....	3,045	1	5,715,500	5,980,390	1,964	1,975	6,013,875
FM Classes B, C, C0, C1 & C2 .....	2,963	1	7,026,150	7,321,585	2,471	2,475	7,333,425
AM Construction Permits .....	113	1	33,945	34,850	308	310	35,030
FM Construction Permits <sup>1</sup> .....	98	1	267,300	53,929	550	550	53,900
Satellite TV .....	123	1	128,100	131,516	1,069	1,075	132,225
Satellite TV Construction Permit .....	3	1	1,560	1,602	534	535	1,605
VHF Markets 1–10 .....	43	1	2,596,125	2,665,365	61,985	61,975	2,664,925
VHF Markets 11–25 .....	61	1	2,654,400	2,725,194	44,675	44,675	2,725,175
VHF Markets 26–50 .....	72	1	2,246,475	2,306,389	32,033	32,025	2,305,800
VHF Markets 51–100 .....	118	1	2,161,725	2,219,379	18,808	18,800	2,218,400
VHF Remaining Markets .....	211	1	951,750	977,134	4,631	4,625	975,875
UHF Construction Permits .....	9	1	27,900	28,644	3,183	3,175	28,575
UHF Markets 1–10 .....	84	1	1,599,750	1,682,187	20,026	20,025	1,682,100
UHF Markets 11–25 .....	79	1	1,310,175	1,384,889	17,530	17,525	1,384,475
UHF Markets 26–50 .....	115	1	1,088,100	1,156,891	10,060	10,050	1,155,750
UHF Markets 51–100 .....	162	1	943,500	993,971	6,136	6,125	992,250
UHF Remaining Markets .....	181	1	301,950	310,003	1,713	1,725	312,225
UHF Construction Permits <sup>1</sup> .....	31	1	192,950	53,475	1,725	1,725	53,475
Broadcast Auxiliaries .....	25,000	1	250,000	256,668	10	10	250,000
LPTV/Translators/Boosters .....	2,900	1	1,116,500	1,146,277	395	395	1,145,500
CARS Stations .....	900	1	135,000	138,001	154	154	139,500
Cable TV Systems .....	65,000,000	1	45,500,000	46,713,502	0.719	0.72	46,800,000
Interstate Telecommunication Service Providers .....	54,000,000,000	1	127,530,000	130,931,273	0.002425	0.00243	131,220,000
CMRS Mobile Services (Cellular/Public Mobile) .....	179,000,000	1	38,250,000	39,565,080	0.221	0.22	39,380,000
CMRS Messaging Services .....	11,200,000	1	1,160,000	896,000	0.08	0.08	896,000
BRS <sup>2</sup> .....	1,800	1	432,000	455,400	253	255	459,000
LMDS <sup>3</sup> .....	330	1	91,800	83,490	253	255	84,150
International Bearer Circuits .....	5,300,000	1	7,056,000	7,244,186	1.37	1.37	7,261,000
International Public Fixed .....	1	1	1,750	1,797	1,797	1,800	1,800
Earth Stations .....	3,400	1	680,000	698,136	205	205	697,000
International HF Broadcast .....	5	1	3,725	3,824	765	765	3,825
Space Stations (Geostationary) .....	81	1	8,829,975	9,065,474	111,919	111,925	9,065,925
Space Stations (Non-Geostationary) .....	6	1	657,000	674,522	112,420	112,425	674,550
Total Estimated Revenue to be Collected .....			272,821,674	280,099,050			280,765,853
Total Revenue Requirement .....			272,958,000	280,098,000			280,098,000
Difference .....			(136,326)	1,050			667,853

\*1,02615787 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108–7 and 47 U.S.C. 159(a)(2)).

<sup>1</sup> The FM Construction Permit and UHF Construction Permit revenues were adjusted so that the construction permit fee is no higher than the level of the lowest licensed fee for that class of service.

<sup>2</sup> MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands et al., *Report & Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

<sup>3</sup> Although we are tracking BRS (formerly MDS/MMDS) and LMDS separately in terms of payment units, the FY 2005 regulatory fee for BRS and LMDS is calculated by combining the units and the "Pro-Rated Revenue Requirements" of both BRS and LMDS.

## ATTACHMENT D.—FY 2005 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed]

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	10
Microwave (per license) (47 CFR part 101) .....	60
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	50
Marine (Ship) (per station) (47 CFR part 80) .....	10
Marine (Coast) (per license) (47 CFR part 80) .....	10
General Mobile Radio Service (per license) (47 CFR part 95) .....	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) .....	5
PLMRS (Shared Use) (per license) (47 CFR part 90) .....	5
Aviation (Aircraft) (per station) (47 CFR part 87) .....	5
Aviation (Ground) (per license) (47 CFR part 87) .....	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	2.19
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.22
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21) .....	255
Local Multipoint Distribution Service (47 CFR, part 101) .....	255
AM Radio Construction Permits .....	310
FM Radio Construction Permits .....	550
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	61,975
Markets 11–25 .....	44,675
Markets 26–50 .....	32,025
Markets 51–100 .....	18,800
Remaining Markets .....	4,625
Construction Permits .....	3,175
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	20,025
Markets 11–25 .....	17,525
Markets 26–50 .....	10,050
Markets 51–100 .....	6,125
Remaining Markets .....	1,725
Construction Permits .....	1,725
Satellite Television Stations (All Markets) .....	1,075
Construction Permits—Satellite Television Stations .....	535
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) .....	395
Broadcast Auxiliaries (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	155
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.72
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00243
Earth Stations (47 CFR part 25) .....	205
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) .....	111,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	112,425
International Bearer Circuits (per active 64KB circuit) .....	1.37
International Public Fixed (per call sign) (47 CFR part 23) .....	1,800
International (HF) Broadcast (47 CFR part 73) .....	765

## FY 2005 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2005 radio station regulatory fees						
Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 and C3	FM classes B, C, C0, C1 and C2
<=25,000 .....	625	475	375	450	550	725
25,001–75,000 .....	1,225	925	550	675	1,125	1,250
75,001–150,000 .....	1,825	1,150	750	1,125	1,550	2,300
150,001–500,000 .....	2,750	1,950	1,125	1,350	2,375	3,000
500,001–1,200,000 .....	3,950	2,975	1,875	2,250	3,750	4,400
1,200,001–3,000,00 .....	6,075	4,575	2,825	3,600	6,100	7,025
>3,000,000 .....	7,275	5,475	3,575	4,500	7,750	9,125

# Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

## AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.<sup>269</sup> Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3<sup>270</sup>. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by

determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

## FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.<sup>271</sup> The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents

the total population for the predicted city grade coverage area.

## Attachment F

### Parties Filing Comments on the Notice of Proposed Rulemaking

Blooston, Mordkofsky, Dickens, Duffy & Prendergast (“BMDDP”).  
Cingular Wireless LLC (“Cingular”).  
National Cable & Telecommunications Association (“NCTA”).  
Satellite Industry Association (“SIA”).  
Tyco Communications (US) Inc. (“Tyco”).  
XO Communications, Inc. (“XO”).

### Parties Filing Reply Comments

American Cable Association (“ACA”).  
Cellular Telecommunications and Internet Association (“CTIA”).  
DIRECTV, Inc. and EchoStar Satellite (“DirecTV & Echostar”).  
Level 3 Communications (“Level 3”).  
Tyco Communications (US) Inc. (“Tyco”).

### Parties Filing a Notice of Oral Ex Parte Presentation

Tyco Telecommunications (“Tyco Telecom”), filed by Harris, Wiltshire & Grannis, LLP.  
Satellite company representatives from Intelsat, PanAmSat, and SES Americom, Filed by Hogan & Hartson, LLP.  
XO Communications (“XO”), Filed by Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC.

## ATTACHMENT G.—FY 2004 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. \$'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90) .....	10
Microwave (per license) (47 CFR part 101) .....	50
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) .....	50
Marine (Ship) (per station) (47 CFR part 80) .....	15
Marine (Coast) (per license) (47 CFR part 80) .....	10
General Mobile Radio Service (per license) (47 CFR part 95) .....	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) .....	5
PLMRS (Shared Use) (per license) (47 CFR part 90) .....	5
Aviation (Aircraft) (per station) (47 CFR part 87) .....	5
Aviation (Ground) (per license) (47 CFR part 87) .....	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97) .....	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) .....	.25
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) .....	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21) .....	270
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) .....	270
AM Radio Construction Permits .....	465
FM Radio Construction Permits .....	1,650
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10 .....	60,375
Markets 11–25 .....	41,475
Markets 26–50 .....	29,175
Markets 51–100 .....	17,575

<sup>269</sup> 47 CFR 73.150 and 73.152.

<sup>270</sup> See *Map of Estimated Effective Ground Conductivity in the United States*, 47 CFR 73.190 Figure R3.

<sup>271</sup> 47 CFR 73.313.

## ATTACHMENT G.—FY 2004 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. \$'s)
Remaining Markets .....	4,050
Construction Permits .....	4,650
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10 .....	17,775
Markets 11–25 .....	16,175
Markets 26–50 .....	9,300
Markets 51–100 .....	5,550
Remaining Markets .....	1,650
Construction Permits .....	5,675
Satellite Television Stations (All Markets) .....	1,050
Construction Permits—Satellite Television Stations .....	520
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) .....	385
Broadcast Auxiliary (47 CFR part 74) .....	10
CARS (47 CFR part 78) .....	135
Cable Television Systems (per subscriber) (47 CFR part 76) .....	.70
Interstate Telecommunication Service Providers (per revenue dollar) .....	.00218
Earth Stations (47 CFR part 25) .....	200
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100) .....	114,675
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) .....	131,400
International Bearer Circuits (per active 64KB circuit) .....	2.52
International Public Fixed (per call sign) (47 CFR part 23) .....	1,750
International (HF) Broadcast (47 CFR part 73) .....	745

## FY 2004 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2004 Radio station regulatory fees						
Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<–25,000 .....	600	450	350	425	525	675
25,001–75,000 .....	1,200	900	525	625	1,050	1,175
75,001–150,000 .....	1,800	1,125	700	1,075	1,450	2,200
150,001–500,000 .....	2,700	1,925	1,050	1,275	2,225	2,875
500,001–1,200,000 .....	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001–3,000,000 .....	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000 .....	7,200	5,400	3,325	4,250	7,350	8,775

**Statement of Commissioner Michael Copps, Concurring; Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2005**

As in past years, I concur to emphasize that the Commission should consider initiating a proceeding to address when or how it would adjust the regulatory fees pursuant to section 9(b)(3) of the Act. As technology advances and our regulatory activities change, we must continue to look for ways to improve our regulatory fee methodology to ensure that we continue to comply fully with the Act's requirements.

**Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part; Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2005; MD Docket No. 05–59**

As in years past, I must concur to portions of our Regulatory Fee Order because I remain troubled with the Commission's inability to consider changes that undoubtedly occur from time to time in the costs of regulatory fees for individual services. I encourage the Commission to continue to improve its regulatory fee assessment processes so that in the future we are more able to make these adjustments as appropriate.

**List of Subjects in 47 CFR Part 1**

Administrative practice and procedure.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

**PART 1—PRACTICE AND PROCEDURE**

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

■ 2. Section 1.1152 is revised to read as follows:

**§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.**

Exclusive use services (per license)	Fee amount <sup>1</sup>	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):		
(a) New, Renew/Mod (FCC 601 & 159) .....	\$10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ..	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
220 MHz Nationwide:		
(a) New, Renew/Mod (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ..	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
2. Microwave (47 CFR 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159) .....	60.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ..	60.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	60.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	60.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
3. 218-219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ..	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
4. Shared Use Services, Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) ..	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
General Mobile Radio Service:		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) ..	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Rural Radio (Part 22):		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Marine Coast:		
(a) New Renewal/Mod (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) Renewal Only (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Aviation Ground:		
(a) New, Renewal/Mod (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) Renewal Only (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159) .....	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Marine Ship:		
(a) New, Renewal/Mod (FCC 605 & 159) .....	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 605 & 159) .....	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) .....	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Aviation Aircraft:		
(a) New, Renew/Mod (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) ..	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
(c) Renewal Only (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251-5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159) .....	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159) .....	2.19	FCC, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159) .....	2.19	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
6. CMRS Mobile Services (per unit) (FCC 159) .....	<sup>2</sup> .22 &	FCC, P.O. Box 358835, Pittsburgh, PA 15251-5835.
7. CMRS Messaging Services (per unit) (FCC 159) .....	<sup>3</sup> .08	FCC, P.O. Box 358835, Pittsburgh, PA 15251-5835.
8. Multipoint Distribution (Includes MMDS and MDS) .....	255	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251-5835.
9. Local Multipoint Distribution Service .....	255	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251-5835.

<sup>1</sup> Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102.

<sup>2</sup> These are standard fees that are to be paid in accordance with § 1.1157(b).

<sup>3</sup> These are standard fees that are to be paid in accordance with § 1.1157(b).

■ 3. Section 1.1153 is revised to read as follows:

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
1. <i>AM Class A</i>		
≤25,000 population .....	\$625	FCC, Radio, P.O. Box 358835, Pittsburgh, PA 15251–5835.
25,001–75,000 population .....	1,225	
75,001–150,000 population .....	1,825	
150,001–500,000 population .....	2,750	
500,001–1,200,000 population .....	3,950	
1,200,001–3,000,000 population .....	6,075	
>3,000,000 population .....	7,275	
2. <i>AM Class B</i>		
≤25,000 population .....	475	
25,001–75,000 population .....	925	
75,001–150,000 population .....	1,150	
150,001–500,000 population .....	1,950	
500,001–1,200,000 population .....	2,975	
1,200,001–3,000,000 population .....	4,575	
>3,000,000 population .....	5,475	
3. <i>AM Class C</i>		
>25,000 population .....	375	
25,001–75,000 population .....	550	
75,001–150,000 population .....	750	
150,001–500,000 population .....	1,125	
500,001–1,200,000 population .....	1,875	
1,200,001–3,000,000 population .....	2,825	
>3,000,000 population .....	3,575	
4. <i>AM Class D</i>		
≤25,000 population .....	450	
25,001–75,000 population .....	675	
75,001–150,000 population .....	1,125	
150,001–500,000 population .....	1,350	
500,001–1,200,000 population .....	2,250	
1,200,001–3,000,000 population .....	3,600	
>3,000,000 population .....	4,500	
5. AM Construction Permit .....	310	
6. <i>FM Classes A, B1 and C3</i>		
≤25,000 population .....	550	
25,001–75,000 population .....	1,125	
75,001–150,000 population .....	1,550	
150,001–500,000 population .....	2,375	
500,001–1,200,000 population .....	3,750	
1,200,001–3,000,000 population .....	6,100	
>3,000,000 population .....	7,750	
7. <i>FM Classes B, C, C0, C1 and C2</i>		
≤25,000 population .....	725	
25,001–75,000 population .....	1,250	
75,001–150,000 population .....	2,300	
150,001–500,000 population .....	3,000	
500,001–1,200,000 population .....	4,400	
1,200,001–3,000,000 population .....	7,025	
>3,000,000 population .....	9,125	
8. FM Construction Permits .....	550	
TV (47 CFR part 73), VHF Commercial:		
1. Markets 1 thru 10 .....	61,975	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25 .....	44,675	
3. Markets 26 thru 50 .....	32,025	
4. Markets 51 thru 100 .....	18,800	
5. Remaining Markets .....	4,625	
6. Construction Permits .....	3,175	
UHF Commercial:		
1. Markets 1 thru 10 .....	20,025	FCC, UHFCommercial, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25 .....	17,525	
3. Markets 26 thru 50 .....	10,050	
4. Markets 51 thru 100 .....	6,125	
5. Remaining Markets .....	1,725	
6. Construction Permits .....	1,725	
Satellite UHF/VHF Commercial:		
1. All Markets .....	1,075	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits .....	535	

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74)	395	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251-5835.
Broadcast Auxiliary .....	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251-5835.

■ 4. Section 1.1154 is revised to read as follows:

**§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.**

	Fee amount	Address
Radio facilities: 1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	\$60.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251-5994.
Carriers: 1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499-A).	.00243	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251-5835.

■ 5. Section 1.1155 is revised to read as follows:

**§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.**

	Fee amount	Address
1. Cable Television Relay Service .....	\$155	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251-5835.
2. Cable TV System (per subscriber) .....	.72	

■ 6. Section 1.1156 is revised to read as follows:

**§ 1.1156 Schedule of regulatory fees and filing locations for international services.**

	Fee amount	Address
Radio Facilities: 1. International (HF) Broadcast .....	\$765	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.
2. International Public Fixed .....	1,800	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251-5835.
Space Stations (Geostationary Orbit) .....	111,925	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
Space Stations (Non-Geostationary Orbit) .....	112,425	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
Earth Stations, Transmit/Receive & Transmit Only (per authorization or registration).	205	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.
Carriers, International Bearer Circuits (per active 64KB circuit or equivalent).	1.37	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251-5835.

[FR Doc. 05-14267 Filed 7-20-05; 8:45 am]  
BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 230

[Docket No. FRA 2005-20044, Notice No. 2]

RIN 2130-AB64

#### Inspection and Maintenance Standards for Steam Locomotives

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** On April 19, 2005, FRA published a notice of proposed rulemaking (NPRM) proposing to correct an inadvertent, small omission from FRA Form 4 (Boiler Specification Card) in the Steam Locomotive Inspection and Maintenance Standards. The form is used to record information about inspections of steam locomotive boilers. FRA received two comments supporting the adoption of the proposed rule. Therefore, FRA adopts the proposed rule as a final rule.

**DATES:** Effective Date: This rule is effective August 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** George Scerbo, Motive Power and

Equipment Safety Specialist, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590, (202) 493-6249, [George.Scerbo@fra.dot.gov](mailto:George.Scerbo@fra.dot.gov); or Melissa L. Porter, Trial Attorney, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590, (202) 493-6034, [Melissa.Porter@fra.dot.gov](mailto:Melissa.Porter@fra.dot.gov).

**SUPPLEMENTARY INFORMATION:** On November 17, 1999, FRA published a final rule revising the agency's inspection and maintenance standards for steam locomotives (49 CFR part 230) (64 FR 62828). Appendix C to part 230 contains forms that railroads subject to the rule are required to complete. On FRA Form 4 entitled "Boiler Specification Card," FRA inadvertently omitted three lines in the